

## Briefing

### Reforms to legal aid for social welfare law

#### Introduction

On 15 November 2010, the Government published its proposals for the reform of legal aid in England and Wales. Although the Ministry of Justice (MOJ) says its approach is to protect the most vulnerable in our society, Shelter believes that these reforms will significantly restrict access to justice for those who are already disadvantaged by poverty and social exclusion. The proposals have been developed with the aim of providing a substantial contribution to the MOJ's 23% budget reduction, aiming to deliver savings of approximately £350m by 2014-15. Shelter believes that these proposals, if implemented, are likely to drive up the need for civil legal aid rather than reduce it and therefore increase costs to the taxpayer further down the line.

#### Our key concerns

##### 1. *Scope*

The proposals published by the MOJ seek to restrict the scope of legal aid, particularly limiting its availability for civil matters such as social welfare, employment, education and family law advice. Shelter is particularly concerned about the extent to which Government seeks to cut advice on social welfare law matters such as housing, welfare benefits and debt.

According to the Government's proposals, areas earmarked for cuts include:

- housing advice other than where it relates to narrowly defined homelessness work, the immediate loss of a home or serious injury to health
- all advice on welfare benefit matters
- all advice on debt matters, except where it relates to the immediate loss of a home

##### *Housing*

Shelter is alarmed that so many housing matters may be removed from the scope of legal aid. Legal aid plays an important role in helping the most excluded to access statutory homelessness provisions including temporary and permanent accommodation. It enables incorrect or unlawful housing decisions to be challenged and possession proceedings to be defended. However, it also plays a crucial role in helping the most vulnerable to enforce their housing rights and responsibilities. It is key in resolving disrepair and challenging rogue landlords; it helps to address rent arrears and avoid eviction before court procedures commence. Public funding has played a pivotal role in promoting early intervention before housing problems escalate. In so doing it enables access to justice for the most vulnerable and provides undeniable savings to the public purse.

### *Welfare Benefits & Debt*

Shelter is alarmed that those with benefit problems would be excluded from legally aided advice. This comes at a time of major upheaval in Housing Benefit and with an entirely new benefits system (the proposed Universal Credit) in the pipeline. Welfare benefits law is complex and very often claimants are elderly, ill, disabled or otherwise vulnerable. Shelter is also very concerned that those in debt would only be able to access help once their problems have spiralled out of control and there is an immediate risk of losing their home. Both these areas of law require complex legal advice to resolve problems that have a huge impact on those they affect. The nature of the system and the client group is such that they can not represent themselves. If legal aid for these matters is cut, then wrong or unlawful decisions will go unchallenged.

### *Prevention & problem clusters*

Shelter believes that early advice on housing, debt and benefit problems is key in resolving them before they escalate. The cuts would prevent advisers addressing multiple, interrelated problems. Certain issues tend to occur together in clusters e.g. someone with a rented housing problem is more likely to face homelessness or difficulties with benefits. To address problems early on and in their entirety is precisely to address the drivers of the demand for social welfare law legal aid further down the line.

## **2. Access**

### *Telephone gateway*

The Government proposes that going forward there will be a single telephone gateway to all civil legal aid services. A first tier operator service would talk through the caller's problem, referring on to second tier specialist advice where deemed appropriate. Use of the telephone service would be a pre-requisite to the receipt of legal aid and there would be a presumption in favour of telephone advice and casework.

Shelter is in favour of a multi-channel approach to advice delivery. Telephone helplines can make it easier for those with problems to reach an advice provider promptly. However, many vulnerable clients prefer to walk in to their local advice office. Research shows that in 52% of cases where people seek advice, they do so initially via the telephone. However in around 37% of cases, people make a direct approach in person to an agency.<sup>i</sup> Under the MOJ's proposals, even those with mental ill health or with language difficulties would be expected to use the telephone line in the first instance. However, Shelter's experience is that those who need translation, those who have papers which need to be considered and those with sensitive and difficult stories to tell benefit from a face-to-face interview with a local adviser who has knowledge and expertise in local services. Face-to-face services help to develop a strong relationship between adviser and client, which leads to better information flows, more accurate and appropriate advice. These are instrumental in achieving a quality outcome and value for money.

It is not clear from the MOJ proposals if those referred on to specialist advice would have choice of a particular provider. Shelter believes in the fundamental importance of client choice, not least because a client is more likely to trust and engage with an adviser of their choice, and therefore achieve a better outcome.

Shelter believes that an improved telephone access is to be welcomed, but only as an alternative option. Initial face to face contact must remain.

### *Eligibility*

The MOJ proposes both cuts to eligibility for legal aid and increased financial contributions from clients.

Shelter believes that eligibility for legal aid has already been cut to the bone, with only around 35% of the population currently eligible (compared to 52% in 1998). Only those on Income Support level incomes are automatically entitled. No one receives legal aid unless they have passed both eligibility and merits tests. Shelter believes that legal aid for social welfare law is already very targeted.

Any cuts to eligibility would disproportionately impact on those with least ability to pay. Shelter is aware that there is already a small but significant percentage of people with problems who either do not seek advice, or who attempt to obtain advice but fail to do so. Shelter believes that a tightening of eligibility and raising of contributions will deter people from seeking advice, adding to a build up of unresolved problems, human misery and greater costs to the taxpayer further down the line. The specific cuts proposed will disproportionately impact on low income homeowners, many of whom are in need of housing and debt advice.

### **3. Future Viability**

Shelter has serious concerns that the proposals, when taken together, severely threaten the future viability of the advice sector.

The removal of so much advice work from the scope of legal aid will destabilise the sector and damage the business plan of many providers. It will not be economically viable for them to continue to provide advice in the areas which would remain within the scope of legal aid. The amount of work available will be limited by cuts to scope, cuts to eligibility and by transferring face to face work to a new telephone line. This risks deskilling the sector, losing crucial specialisms and expanding advice deserts. The MOJ proposes an across the board cut in fees for legally aided work of 10%. Given that margins are already too tight, many providers will be forced to close.

The MOJ claims to have taken many factors into account when deciding where to make the cuts. It notes the existence of alternative sources of advice, citing local authority in-house services and

organisations such as Shelter. However, Shelter is likely to lose all its income for welfare benefits advice and much of its income for debt and housing advice. At a national level we estimate there would be a reduction of 70% in our income for legal aid advice work. This represents 46% of our total statutory and contract income. This represents 14,633 cases which would be removed from legal aid.

Shelter could not possibly fill the gap left by such major cuts and we remain to be convinced that local authority in-house advice services, valuable as they are, are geared up to absorb the amount of unmet need these proposals would create. Shelter envisages that many people will turn to local MP and councillor surgeries in search of help and that referrals to local advice agencies and solicitors will be much more difficult.

#### 4. Shelter's view

Shelter cannot reconcile the stated aims of protecting the most vulnerable with proposals to cut social welfare law advice in this way. Social welfare law only uses around 5% of the total legal aid budget (around £136m of a total £2.1bn pot). It provides extremely good value for money.

- For every £1 of legal aid expenditure on **housing** advice, the state potentially saves **£2.34**.
- For every £1 of legal aid expenditure on **debt** advice, the state potentially saves **£2.98**.
- For every £1 of legal aid expenditure on **benefits** advice, the state potentially saves **£8.80**.<sup>ii</sup>

We say:

- **Debt, welfare benefits and housing matters must remain in scope to avoid driving up costs.**
- **An improved telephone access is to be welcomed, but only as an alternative option. Initial face to face contact must remain for those who need it.**
- **There should be no further reductions in eligibility for legal aid.**
- **Fees could be frozen, not cut.**

#### What you can do

- Write to the Minister for Justice to express your concern about these cuts;
- Visit your local advice centre and find out more about social welfare advice in your area.
- Join the campaign at [www.justice-for-all.org.uk](http://www.justice-for-all.org.uk)

For further information, please contact Anne Baxendale, Senior Public Affairs Officer, by email on [anne\\_baxendale@shelter.org.uk](mailto:anne_baxendale@shelter.org.uk) or by telephone on 0344 515 1182.

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<sup>i</sup> Report of the 2006-09 English and Welsh Civil and Social Justice Survey

<sup>ii</sup> Towards a business case for legal aid, Citizens Advice, July 2010